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JAN 13 1941

CHARLES ELMORE GROPLEY
CLERK

IN THE
Supreme Court of the United States

.....TERM.....

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No. **694**.....

LUZON BROKERAGE CO., INC., *Petitioner,*

versus

PUBLIC SERVICE COMMISSION AND V. FRAGANTE, AS DI-
RECTOR OF THE BUREAU OF PUBLIC WORKS, *Respondents.*

**PETITION FOR CERTIORARI
AND BRIEF IN SUPPORT
THEREOF**

L. D. LOCKWOOD
Attorney for Petitioner



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No.....

LUZON BROKERAGE CO., INC., *Petitioner,*

versus

PUBLIC SERVICE COMMISSION AND V. FRAGANTE, AS DIRECTOR OF THE BUREAU OF PUBLIC WORKS, *Respondents.*

PETITION FOR CERTIORARI

TO THE SUPREME COURT OF THE UNITED STATES:

Your petitioner respectfully prays for a writ of certiorari to review the judgment of the Supreme Court of the Philippines in the case of Luzon Brokerage Co., Inc. *vs.* Public Service Commission and V. Fragante, as Director of Public Works, denying a petition for a writ of prohibition to restrain the Public Service Commission from requiring the petitioner to obtain a certificate of public convenience and the Director of Public Works from refusing to register its motor trucks unless petitioner presents a certificate of public convenience.

The judgment of the Supreme Court of the Philippines was rendered on June 25, 1940 (R. 71). A motion for reconsideration was filed on July 11, 1940 (R. 73), and was denied on August 1, 1940 (R. 108). Final judgment was entered on August 5, 1940 (R. 108).

Statement of the Matter Involved

This proceeding involves the correctness of the decision and judgment of the Supreme Court of the Philippines denying the petition for a writ of prohibition against the defendants.

For approximately twenty-seven years the petitioner has been engaged in the customs brokerage business in Manila. Said business involves the receiving, storage, and/or forwarding and delivery of goods and cargo which are received from ships in the port of Manila consigned to clients of petitioner; and in connection with this business, and as a necessary incident thereto, the petitioner maintains and operates a fleet of motor trucks used exclusively for the carriage of such goods and cargo received from ships and delivered to petitioner's clients. These trucks do not serve the general public and are used only to transport goods and cargo from the piers at Manila to the clients of petitioner as customs broker (R. 3 and 23).

In the year 1932, in another case between exactly the same parties, the Supreme Court of the Philippines decided that this business of petitioner (the operation of motor trucks as above set forth) is not a public utility or service (57 Phil. 536).

The business of petitioner is conducted exactly the same now as it was in the year 1932 and the years prior thereto (R. 3 and 23).

The law of the Philippines defining a public utility or service was amended ultimately by Commonwealth Act No. 454 so that a public service includes any individual, corporation, etc., operating any of certain businesses therein mentioned, "with general or *limited clientele*, whether permanent, occasional or accidental, * * *". This Act took effect on June 8, 1939 (Commonwealth Act 454) (R. 4 and 61).

Sixteen days later, or, on June 24, 1939, the Public Service Commission notified petitioner that its autotruck service is now "included and considered as a public service" by virtue of the provisions of Sec. 1 of Commonwealth Act 454, and petitioner was required to file an application before the Commission for the issuance of a certificate of public convenience to operate such autotruck freight service within thirty days; and petitioner was further notified that failure to comply with this requirement within the time specified would be considered as a violation of the provisions of Commonwealth Act No. 146, as amended (R. 5). This requirement was reiterated again under date of August 8, 1939 (R. 6) and again on October 25, 1939 (R. 8), with the further advertence that the "Commission will take the necessary action in accordance with the provisions of Commonwealth Act No. 146, as amended."

Also, under date of October 19, 1939, the Director of Public Works, who is in charge of the motor vehicle registration in the Philippines, advised petitioner that he would "require the Luzon Brokerage Company to present a certificate of public convenience from the Public Service Commission before accepting the re-registration of the company's "TC" trucks next year" (R. 9).

The proposed action of these two branches of the government would have put the petitioner out of business at the end of the year so far as the transportation of goods and cargo of its clients was concerned, if it did not obtain a certificate of public convenience, because without the certificate the trucks could not be registered, and could not operate on the streets of Manila.

Thereupon, on November 8, 1939, the petitioner filed a verified petition in an original action before the Supreme Court of the Philippines, praying that a preliminary injunction be issued and that, after hearing,

judgment be entered commanding the respondents to desist or refrain from requiring the petitioner to obtain a certificate of public convenience or refusing to register petitioner's motor trucks as private trucks; and that petitioner be granted such other and further relief as might be just and equitable in the premises (R. 1-12). This action was brought under the provisions of Secs. 226-230 of the Philippine Code of Civil Procedure, Act 190 (Vol. I, Public Laws of Philippine Commission, 414).

In this petition it was alleged:

"9. That if according to the provisions of Commonwealth Act No. 454, the petitioner is required, as maintained by the Public Service Commission, to obtain a certificate of public convenience before continuing the operation of its business, then the said Act is unconstitutional as it would deprive the petitioner of its rights and property without due process of law, because the business of petitioner is in truth and in fact a private business and not a public service or public utility; and if petitioner is not so required according to the provisions of Commonwealth Act No. 454, then and in that case the action of the Commission is obviously illegal; and in either case, it is without or in excess of its jurisdiction." (R. 10).

The preliminary injunction was granted (R. 13) but after argument and submission of written memoranda the Court rendered judgment denying the petition.

In the decision under review the Court simply held that under the provisions of Commonwealth Act No. 454 the business of petitioner is a public service; and passed over without mentioning the question of the constitutionality of Commonwealth Act No. 454 which had been raised and extensively argued:

Statement of Question Involved

The question involved is the constitutionality of Commonwealth Act No. 454.

Petitioner's Contention

The petitioner contends that Commonwealth Act No. 454 is unconstitutional because by legislative fiat it attempts to make a public service that which in truth and in fact is not a public service or utility.

Reasons for Granting the Writ

This case presents a situation wherein the Philippine Supreme Court has failed to squarely decide a constitutional question and by its action permits the local authorities to enforce a law which petitioner contends is unconstitutional.

WHEREFORE, it is respectfully prayed that this petition for a writ of certiorari to review the judgment of the Supreme Court of the Philippines in this case be granted.

Manila, Philippines, November 22, 1940.

L. D. LOCKWOOD,
Attorney for Petitioner.